

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

JUL 15 2019

Re: FOIA No. FY19-80
First Rolling Response

VIA E-MAIL AND REGULAR MAIL

Emma Best
MuckRock News
DEPT MR 73728
411A Highland Ave.
Somerville, MA 02144-2516
73728-41167949@requests.muckrock.com

Dear Ms. Best:

This is a response to your correspondence of May 29, 2019, in which you requested information pursuant to the Freedom of Information Act (FOIA),¹ and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108 (2019). Specifically, you requested all documents in the agency's possession that pertain to the WikiLeaks website or organization from January 2006 to the date of this request including, but not limited to, emails, memos, notes, briefings, reports and other documents related to, mentioning or generated as a result of:

- (1) Guidance and instructions for employees regarding visiting the website otherwise reading or learning about it in the news
- (2) Internal reactions to the website's existence and disclosures
- (3) Damage reports regarding the website and its disclosures
- (4) Efforts to identify, investigate and/or mitigate potential leaks to the website
- (5) Efforts to identify, investigate and/or mitigate potential unauthorized viewing of the website or news reports analyzing it and/or its contents²

A search of the Commission's non-public files has identified numerous documents that may be responsive to this request. This response addresses 31 identified responsive documents. Nineteen documents are released in their entirety, and the remaining twelve documents are released with minor redactions. Specifically, the names and contact

¹ 5 U.S.C. § 552, as amended by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

² Per correspondence with the Commission, you agreed to narrow the scope of this request to be limited to the Office of the Executive Director.

information of lower-level Commission personnel have been redacted pursuant to FOIA Exemption 6.³ The documents are enclosed.

Given the volume of information requested and the amount of Commission staff time required to process any responsive documents addressing your request, additional determinations addressing the remaining documents will follow on a rolling basis.⁴ We will endeavor to provide you with another determination within twenty business days of the date of this letter.

Ordinarily, any appeal from a FOIA determination must be filed within 90 days of the date of issuance as provided by the Freedom of Information Act and 18 C.F.R. § 388.110(a)(1) of the Commission's regulations. However, because your request is being processed on a rolling basis, the Commission will hold your appeal rights in abeyance pending a final determination. This will allow you to file a single appeal at the conclusion of our processing of your request.

If you decide to appeal, this appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by email at ogis@nara.gov; telephone at (877) 684-6448; facsimile at (301) 837-0348; or by mail to the Office of Government Information Services, National Archives and

³ 5 U.S.C. § 552(b)(6) (protecting from disclosure files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.)

⁴ See *S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, No. Civ. S-06-2845, 2008 U.S. Dist. LEXIS 107177, 47 (E.D. Cal. June 20, 2008) (supporting the practice of releasing documents on a rolling basis); *Hinton v. Fed Bureau of Investigations*, 527 F. Supp. 223, 225 (E.D. Penn. 1981) (noting that rolling responses preserve the government's right to carefully review material while promoting FOIA's disclosure goals); see also U.S. Dept. of Justice, *FOIA Post*, "OIP Guidance: The importance of Good Communication with FOIA requesters," (posted 2010) (stating agencies should provide rolling responses for requests involving voluminous material).

Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard M. Tao".

Leonard M. Tao
Director
Office of External Affairs

Enclosures (31)

FOIA-2019-80
Accepted: May 31, 2019
Track 3
Due Date: June 28, 2019

From: 73728-41167949@requests.muckrock.com <73728-41167949@requests.muckrock.com>
Sent: Monday, May 27, 2019 6:15 PM
To: FOIA-CEII
Cc: FOIA-CEII
Subject: RE: Freedom of Information Act Request: WikiLeaks (Federal Energy Regulatory Commission)

Federal Energy Regulatory Commission
FOIA Office
888 First Street Northeast
Washington, DC 20426

May 27, 2019

This is a follow up to a previous request:

You may limit the request to the office you suggest. Thank you for your helpful suggestion.

(Note: Per FOIA office recommendation: This requester agreed to narrow the scope of this request to the Office of the Executive Director. This office provides administrative support services to the Commission including information technology, organizational management and other functions).

Filed via MuckRock.com

E-mail (Preferred): 73728-41167949@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAawyQJctRkvxj5UXjeYM6dEM4%3A1hVNsx%3Ak9BVzmN49CcmIIvnx8ZWA
Yrhg_o&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2Fnext%3D%252Faccounts%252Fagency_login%252Ffederal-energy-regulatory-commission-206%252Fwikileaks-federal-energy-regulatory-commission-73728%252F%253Femail%253DFOIA-CEII%252540erc.gov

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 73728
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On May 20, 2019:

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

I seek any and all documents in the agency's possession that pertain to the WikiLeaks website or organization from January 2006 to the present date, including but not limited to emails, memos, notes, briefings, reports and other documents related to, mentioning or generated as a result of:

- * guidance and instructions for employees regarding visiting the website or otherwise reading or learning about it in the news
- * internal reactions to the website's existence and disclosures
- * damage reports regarding the website and its disclosures
- * efforts to identify, investigate and/or mitigate potential leaks to the website
- * efforts to identify, investigate and/or mitigate potential unauthorized viewing of the website or news reports analyzing it and/or its contents

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Emma Best

Filed via MuckRock.com

E-mail (Preferred): 73728-41167949@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAawyQJctRkvxj5UXjeYM6dEM4%3A1hVNsx%3Ak9BVzmN49CcmIIvnx8ZWA
Yrhg_o&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2Fnext%3D%252Faccounts%252Fagency_login%252Ffederal-energy-regulatory-commission-206%252Fwikileaks-federal-energy-regulatory-commission-73728%252F%253Femail%253DFOIA-CEII%252540erc.gov

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I am a member of the news media and request classification as such. I have previously written about the government and its activities, with some reaching over 100,000 readers in outlets such as Gizmodo, MuckRock, Motherboard, Property of the People, AND Magazine, Unicorn Riot, and more. As such, as I have a reasonable expectation of publication and my editorial and writing skills are well established. In addition, I discuss and comment on the files online and make them available through non-profits such as the library Internet Archive and the journalist non-profit, MuckRock, disseminating them to a large audience. While my research is not limited to this, a great deal of it, including this, focuses on the activities and attitudes of the government itself. As such, it is not necessary for me to demonstrate the relevance of this particular subject in advance.

Additionally, case law states that "proof of the ability to disseminate the released information to a broad cross- section of the public is not required." Judicial Watch, Inc. v. Dep't of Justice, 365 F.3d 1108, 1126 (D.C. Cir. 2004); see Carney v. U.S. Dep't of Justice, 19 F.3d 807, 814-15 (2d Cir. 1994). Further, courts have held that "qualified because it also had "firm" plans to "publish a number of . . . 'document sets'" concerning United States foreign and national security policy." Under this criteria, as well, I qualify as a member of the news media.

Additionally, courts have held that the news media status "focuses on the nature of the requester, not its request. The provision requires that the request be "made by" a representative of the news media. Id. § 552(a)(4)(A)(ii)(II). A newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information." As such, the details of the request itself are moot for the purposes of determining the appropriate fee category.

As my primary purpose is to inform about government activities by reporting on it and making the raw data available, I request that fees be waived.